IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 28, 2007 Session

CHATTANOOGA-HAMILTON COUNTY HOSPITAL AUTHORITY d/b/a ERLANGER HEALTH SYSTEM v. BRADLEY COUNTY, TENNESSEE, ET AL.

Chancery Court for Bradley County
No. 01-386 Jerri S. Bryant, Chancellor

No. E2006-01457-COA-R3-CV - FILED APRIL 3, 2007

Charles D. Susano, Jr., concurring.

I concur because I believe I am obligated to do so by the holding in ***Chattanooga-Hamilton County Hosp. Auth. dba Erlanger Health Sys. v. Bradley County***, 66 S.W.3d 888 (Tenn. Ct. App. 2001) ("***Erlanger I***"). I write separately to state that, if ***Erlanger I*** were not binding precedent, see Tenn. Sup. Ct. R. 4(H)(2), I would be persuaded, as Bradley County argues, that the provisions of Tenn. Code Ann. § 41-4-115(a) are limited to "prisoners confined in the jail," which Brandon Ramsey never was. In fact, the injury that led to his hospitalization and resulting debt to Erlanger occurred *before* he was in "custody" pursuant to the police hold. "Confined in the jail" is very specific language. I assume, as I must, that the legislature meant what it said. That language says to me that the General Assembly made a public policy decision to burden "county legislative bodies" with the obligation "to provide medical attendance" *only* in those cases where the need for medical attention arises while a prisoner is "confined in the jail."[1] This is what the statute says. Had the legislature intended to extend this obligation to cover an individual in the hospital "under a police hold" before formal arrest, it could have broadened the language to cover such a situation. It did not. It is not our prerogative to establish or modify public policy in an area where the legislature has spoken in clear and unmistakable terms. ***Alcazar v. Hayes***, 982 S.W.2d 845, 851 (Tenn. 1998). In general terms, the establishment of public policy is the function and right of the legislative branch.

Because of ***Erlanger I***, I concur.

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CHARLES D. SUSANO, JR.

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[1] We do not have to reach the issue of whether an individual, who is under arrest and in custody but not yet physically in jail, is "confined in the jail"; nor do we have to decide whether the concept of "confined in the jail" is broad enough to cover an individual who is placed in jail and subsequently injured while temporarily released from custody on furlough. Neither of these factual scenarios are before us in the instant case.